

Federal Housing Finance Board

§ 932.41

shall publish notice, by FEDERAL REGISTER, distribution of a memorandum, or otherwise, of the CPI-adjusted limit on ACPD.

(d) *Expenses.* Each Bank may pay its directors for such necessary and reasonable travel, subsistence and other related expenses incurred in connection with the performance of their official duties as are payable to senior officers of the Bank under the Bank's travel policy, except that directors may not be paid for gift or entertainment expenses.

(e) *Disclosure.* Each Bank shall, in its annual report:

(1) State the sum of the total actual compensation paid to its directors in that year;

(2) State the sum of the total actual expenses paid to its directors in that year; and

(3) Summarize its policy on director compensation.

[61 FR 43154, Aug. 21, 1996]

§ 932.28 Duties.

Bank directors, individually and collectively, have the specific duty of seeing that the Bank complies with applicable provisions of the Act and these regulations. Directors shall hold meetings and perform duties as prescribed in the Bank's bylaws.

[43 FR 46837, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989]

§ 932.29 Responsibility of bank directors.

Except when otherwise designated by the Board in specific instances, and notwithstanding anything to the contrary contained in this chapter V, a director of a Bank shall have no responsibility for the activities of any person acting on behalf of the Board or Federal Savings and Loan Insurance Corporation in an agency capacity (pursuant to § 501.10 or § 501.11 of this part or otherwise), and a director of a Bank shall have no liability directly or indirectly to any person (including without limitation any member, employee of the Bank, officer or director of the Bank, or contractor with or supplier to the Bank) arising out of any act or omission by any person acting in such capacity. In specific circumstances the

Board may, by order or otherwise, determine whether an activity is conducted on behalf of the Board or the Federal Savings and Loan Insurance Corporation.

[51 FR 28222, Aug. 6, 1986; 51 28690, Aug. 11, 1986. Redesignated at 54 FR 36759, Sept. 5, 1989]

§§ 932.30—932.39 [Reserved]

§ 932.40 Selection.

(a) *Bank Presidents.* Each Bank may appoint a President, subject to the following limitations:

(1) No appointment of a new Bank President shall be effective until approved by the Finance Board;

(2) A President shall serve at the pleasure of the Bank; and

(3) A President may be suspended or removed by the Finance Board for cause, which shall be communicated in writing to the President and the Bank.

(b) *Bank employees other than the President.* Each Bank may appoint or elect officers other than the President and may hire other employees of the Bank without prior Financial Board approval.

(c) *Prohibition on employment contracts.* A Bank shall not enter into an employment contract with an employee.

(d) *Conflicts of interest.* A Bank employee shall not also be employed by, or otherwise act in any capacity for, a member or an institution eligible to make application to become a member.

[62 FR 9, Jan. 2, 1997]

§ 932.41 Compensation.

(a) *Definitions.* The following definitions apply for purposes of this section:

Bonus means a payment to an employee, other than base salary and benefits, that is not based on performance.

Incentive payment means a direct or indirect transfer of funds by a Bank to a Bank employee, in addition to base salary, based on the employee's on-the-job performance.

Nondiscriminatory means that the plan, contract or arrangement in question applies to all employees of a Bank who meet reasonable and customary eligibility requirements applicable to all employees, such as minimum length

of service requirements. A nondiscriminatory plan, contract, or arrangement may provide different benefits based only on objective criteria such as base salary, total compensation, length of service, job grade or classification, which are applied on a proportionate basis.

Payment. (1) the term *payment* means:

(i) Any direct or indirect transfer of any funds or any asset;

(ii) Any forgiveness of any debt or other obligation; and

(iii) Any segregation of any funds or assets, the establishment or funding of any trust or the purchase of, or arrangement for, any letter of credit or other instrument for the purpose of making, or pursuant to any agreement to make, any payment on or after the date on which such funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on:

(A) The determination, after such date, of the liability for the payment of such amount; or

(B) The liquidation, after such date, of the amount of such payment.

(2) The term *payment* does not mean:

(i) Reimbursement of an employee by the Bank for necessary and customary expenses incurred by the employee in the scope of his or her employment while carrying out the business of the Bank; or

(ii) Benefits.

Severance pay plan means a severance pay plan or arrangement as that term is defined in the Employee Retirement Income Security Act of 1974 (as amended) (29 U.S.C. 1002(1)) (ERISA) and regulations thereunder which is non-discriminatory and which provides for payment of severance benefits to all eligible employees upon involuntary termination, provided that no employee shall receive any such payment which exceeds the base compensation paid to such employee during the twelve (12) months immediately preceding termination of employment.

(b) *Base salaries of Bank employees.*—

(1) *Bank President.* (i) The Finance Board annually will determine and publish by November 30 caps on the

base salary paid to the Bank President for the subsequent calendar year for each of the 12 Banks.

(ii) The base salary cap for each Bank shall be based on the average base salary of a chief executive officer of a subsidiary financial institution in the Bank's primary metropolitan statistical area with an asset size comparable to that of the Bank, as of June of the prior year, reduced by five percent and rounded to the nearest \$5,000.

(iii) Each Bank shall establish, on an annual basis, a reasonable base salary for its President, not to exceed 100 percent of the applicable base salary cap published by the Finance Board, except that for a Bank President whose approved base salary for the calendar year 1997 exceeds the cap published by the Finance Board for 1997, the Bank shall establish, on an annual basis, a reasonable base salary not exceeding the greater of the Bank President's approved base salary for the calendar year 1997 or the base salary cap published by the Finance Board for the year.

(iv) By January 31 of each year, a Bank must report to the Finance Board the approved base salary of its President for that year.

(2) *Other Bank employees.* Each Bank shall establish base salaries for employees other than the President that are reasonable and comparable with the base salaries of employees of the other Banks and other similar businesses (including financial institutions) with similar duties and responsibilities, provided that no employee's base salary shall exceed the base salary of the Bank President.

(3) *Documentation.* Each Bank shall maintain documentation supporting the reasonableness and comparability of their employees' base salaries.

(c) *Incentive payments for Bank employees.*—(1) *In general.* A Bank may establish an incentive payment program or programs for its employees.

(2) *Bank President.* (i) The maximum incentive payment to a Bank President may not exceed the difference between that President's base annual salary approved by the Bank and 125 percent of the annual base salary cap, as published by the Finance Board.

(ii) At least fifty percent of the Bank President's incentive payment shall be based on the extent to which the Bank meets reasonable numerical performance targets established by the Bank's board of directors related to the Bank's achievement of its housing finance mission, which shall include substantial consideration of growth in innovative products directed at unmet credit needs, growth in pre-committed Community Investment Program advances, growth in non-advance credit support and risk management products for members, as well as growth in advances, including long-term advances. The remaining portion of the Bank President's incentive payment shall be based on the extent to which the Bank meets reasonable numerical performance targets established by the Bank's board of directors related to achievement of goals established by the board of directors, in its discretion.

(iii) Any incentive payment made to a Bank President shall be based solely upon the extent to which a Bank achieves the performance targets established by the board of directors.

(iv) By January 31 of each year, the board of directors of each Bank that intends to make any incentive payment to its President for such year shall adopt a resolution establishing the performance measures and targets on which such incentive payment will be based.

(v) By March 1 of each year, the board of directors of each Bank making any incentive payment to its President for the prior year shall adopt and submit to the Finance Board a resolution showing the results for the individual performance measures and the amount of the incentive payment to the Bank President for the prior year.

(vi) A Bank shall not make any incentive payment to its President if the most recent examination of the Bank by the Finance Board identified an unsafe or unsound practice or condition with regard to the Bank, provided that if the finding of an unsafe or unsound practice or condition subsequently is resolved in favor of the Bank by the Finance Board, the Bank may pay its President the incentive payment that he or she otherwise would have received.

(3) *Incentive payments for other Bank employees.* (i) Each Bank may make incentive payments to employees other than the President, provided that such incentive payments are reasonable and comparable with incentive payments made to employees of the other Banks and other similar businesses (including financial institutions) with similar duties and responsibilities. Each Bank shall maintain documentation supporting the reasonableness and comparability of their employees' incentive payments.

(ii) The total incentive payment opportunity, expressed as a percentage of base salary, for an employee other than the Bank President shall not exceed the total incentive payment opportunity, expressed as a percentage of base salary, allowable for the Bank President.

(iii) An incentive payment for an employee other than the Bank President shall be based on the extent to which the employee meets objective performance targets related to performance criteria established by the Bank's board of directors under the Bank's incentive compensation program or programs.

(d) *Severance plans.* A Bank may make payments in the nature of severance to its President and to other Bank employees only pursuant to a severance pay plan.

(e) *General limits on payments.* (1) No Bank shall make any payment to a Bank employee, except as provided in this section.

(2) The total amount of base salaries, incentive payments, and benefits paid to Bank employees shall be within the limit set forth in the Bank's approved budget. The board of directors of each Bank shall review annually the compensation for its employees, including appropriate documentation, prior to approving the Bank's annual budget.

(f) *Prohibition on bonuses.* A Bank shall not pay any employee or other person a bonus.

(g) *Determination of employee status.* A Bank shall not treat an employee as an independent contractor in order to avoid complying with the requirements of this section.

[62 FR 9, Jan. 2, 1997]